UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1132
12 April 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-eighth session

SUMMARY RECORD OF THE 1132nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 28 February 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-15433 (E)

The meeting was called to order at 10.10.a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Initial report of Zimbabwe (CERD/C/217/Add.1) (continued)

1. At the invitation of the Chairman, the members of the Zimbabwean delegation resumed their seats at the Committee table.

2. Mr. CHINAMASA (Zimbabwe) expressed satisfaction at the fruitful dialogue that had begun between the Committee and his delegation, which would recommend that the Government should consider making the declaration provided for in article 14, paragraph 1, of the Convention and that it should ratify article 8 as amended.

3. With regard to education, the provision of the Education Act whereby at least 60 per cent of pupils in every educational establishment, whether public or private, must be Africans, had made it possible to end the segregation that had prevailed during colonial times and strengthen social integration and racial harmony. The Government had also taken various measures to combat discrimination due to disparity of income. Disadvantaged families thus received State aid to pay the fees of children attending primary and secondary school. Access to higher education was determined by merit alone, and all students, whatever their families' income, received State aid in the form of scholarships and loans. However, for reasons of economy, the State was considering reducing aid to students from wealthier families. For the same reasons, the Government was encouraging non-African minorities, especially the Greeks, Portuguese and Asians, to set up schools.

4. Teaching was conducted not only in English, which was the official, common language, but also in Shona and Ndebele, the vernacular languages spoken by 65 and 15 per cent of the population respectively, in places where they were majority languages. The State was currently making efforts to introduce other vernacular languages, such as Kalanga and Tonga, into education.

5. The Government was also trying to limit elitism and to raise black people's cultural and economic level in order to place them on an equal footing with other categories of the population. There, too, however, the colonial heritage was a serious handicap that would take a long time to overcome.

6. The Government would take steps fully to meet its obligations under article 7 of the Convention, in particular to include the subject of human rights and awareness-raising courses on racial matters in school curricula. It would also try to include in its following report information on the school attendance rates of boys and girls in primary, secondary and higher education and the percentage of black children in private schools.

7. It must be acknowledged that the legislation to eliminate any incitement to racial hatred and any acts of discrimination was not yet sufficient to meet the obligations laid down in article 4 of the Convention. The Government

would therefore take all necessary steps to ensure that all acts of racial discrimination were declared punishable offences, despite the fact that it was sometimes difficult to criminalize such acts. It should be noted that the "Racial Trusts" had been declared unlawful by Act No. 13 of 1991 (see report, para. 10).

8. Turning to the question of property rights, he said that the right to own property was enshrined in the Constitution but was not sacrosanct. The State had the power to derogate from it for public purposes. Under the 1992 Land Acquisition Act, in order to implement its policy on the redistribution of land, which was very inequitably distributed between Blacks and Whites as a result of colonization (see report, paras. 25 to 31), the State had the power to expropriate land belonging to Whites and give it to black farmers, after fairly compensating the owners. Owners of land were entitled to appeal against that decision if they considered the Government to have acted mala fide. The price of land not affected by the agrarian reform was determined by the free play of supply and demand. It should be made clear that the allegations that white landowners who wished to sell their land gave priority to white buyers at the expense of black buyers by offering more attractive prices to Whites were groundless. If such practices existed, they were very rare.

9. The Government would provide statistics in its following report on land distributed to the Shonas and Ndebeles.

10. In relation to the policy of national reconciliation, Zimbabwe had opted in 1980 for amnesty in respect of crimes committed by Whites against Blacks during the colonial period, which was why the country had achieved the peace and stability it now enjoyed, even though racist behaviour had not yet completely disappeared. The different communities had learned to accept and respect each other, and other countries, such as South Africa, had modelled their own policies on Zimbabwe's policy in that area. Another reflection of the policy of reconciliation was Zimbabwe's determination to give the Ndebeles, the minority group, the same educational opportunities as the Shonas. The Government was therefore working to ensure that primary school teachers in the Ndebele areas, often Shonas who had formerly been favoured in educational terms, spoke their pupils' mother tongue.

11. The country's population was 65 per cent Shona and 15 per cent Ndebele, with the many other groups representing a small percentage apiece. There had been approximately 250,000 Whites at independence; there were now approximately 100,000 of them, and 30,000 inhabitants of Asian origin. The following report would contain a more precise breakdown of the population by ethnic group. Although there was no legislation to ensure that those groups were represented, there was no discrimination against any of them, since the country was divided into voting districts that respected their unity. Each of them could therefore elect a representative to defend its interests, as attested by the diversity of ethnic origins, including white and Asian, of the members of Parliament. Furthermore, the Constitution authorized the President to appoint 12 individuals to represent the particular interests of a given group, including the Whites. The Zanu party (PF) was the majority party (117 seats out of 120) in the Parliament, but it was itself the result of the merging, in 1987, of two parties, one supported by the Shonas and the other by

the Ndebeles, as part of the policy of reconciliation. Although there was no law stipulating that the President and Vice-President should not belong to the same ethnic group, the current President of Zimbabwe was in fact a Shona and the two Vice-Presidents each belonged to a different ethnic group. It was worth noting that Zimbabwe's example had been followed by Malawi and South Africa.

12. The Ombudsman was appointed by the President, in consultation with the Judicial Service Commission, and was required to have the same qualifications as a judge; the Ombudsman was therefore a highly qualified person whose role was to investigate any action by the authorities that might constitute an injustice towards a private individual. There were plans to extend the Ombudsman's sphere of competence to cover the defence, police and army departments, which appeared to be responsible for most acts of injustice. The Ombudsman might also be empowered, in the near future, to intervene in all cases of human rights violations committed by a public official. The Ombudsman's functions were different from those of the administrative tribunal in that he only intervened when judicial remedies had been exhausted and could initiate an inquiry and intervene when he considered that an injustice had been committed.

13. Replying to the questions on the legal aspects of marriage and inheritance, he explained that, given the country's history, the law governing those matters was not yet standardized although the scope of ordinary law was constantly expanding. There were three types of marriage: civil marriage, which was monogamous and accessible to everyone; marriage according to customary law, which was potentially polygamous, was governed by the law on African marriages, and was only accessible to Blacks or those who married Blacks; and unregistered customary marriage, which corresponded to de facto marriage and conferred on such couples the same rights as the others. Custody and maintenance of children and divorce were governed by the law. The law no longer required one of the spouses to have been "at fault" for a divorce to take place; the couple could divorce as soon as they recognized that irreconcilable differences existed. There was no law prohibiting mixed marriages between people of different ethnic groups or between Whites and Blacks, although such marriages were often not well accepted by either community.

14. Inheritance depended on the type of marriage entered into. For example, a woman who married under the African marriage law did not inherit anything upon her husband's death. The Government was considering the possibility of changing that situation, in consultation with local leaders and the population as a whole. In the case of Whites, when a civil marriage had been duly registered, the widow and children inherited upon the husband's death.

15. The question of acquiring nationality had been mentioned. A candidate for Zimbabwean nationality had to submit an application, which was duly considered; if it was accepted that person became a Zimbabwean citizen.

16. Concern had been expressed regarding freedom of expression. He could state with certainty that the press was completely free. He cited the example of a Shona mayor who had criticized the policy, which he considered discriminatory, pursued by his own party, the party in power, vis-à-vis the

Ndebeles. He acknowledged, however, that the ZBC radio station was State-run, which represented a constraint on freedom of expression. The reason was that Zimbabwe did not want its media to fall into the hands of foreign interests. It was, however, considering ways of making room for the private sector, and competition between government-owned and privately-owned media should begin in the near future.

17. In the legislative sphere, international conventions and treaties only became part of domestic law when they had been incorporated under specific enactments. Private individuals who felt that any of their rights had been violated could apply directly to the Supreme Court, which could issue an order or direction to redress the injury. An inter-ministerial committee had also been established to protect and promote human rights and ensure coordination with NGOs.

18. He assured the members of the Committee that the next report would contain more information on measures taken to combat racism in various fields, especially in employment, where discrimination was difficult to eliminate, since the means of production were primarily held by Whites, who were also responsible for recruitment. He asked Mrs. Sadiq Ali to inform him of the sources of her information concerning the human rights demonstration which had allegedly taken place in 1992, resulting in the killing of 22 people and the wounding of 31 by the police. He thanked the Committee for giving him the opportunity to reply to the questions raised and promised that Zimbabwe's next report would contain specific replies to the questions that had not been answered.

19. The CHAIRMAN welcomed the optimism shown by the Zimbabwean delegation in its replies to members and Zimbabwe's concern to fulfil its obligations under the Convention.

20. Mr. ABOUL-NASR expressed admiration for the way in which Zimbabwe was resolving its problems, thus serving as a model for other countries, notably South Africa. Concerning the second type of marriage, known as customary marriage, he would like to know whether there were any restrictions based on race or ethnic group. What exactly did the expression "African marriage" mean?

21. Mr. CHINAMASA (Zimbabwe) acknowledged that polygamous marriages were reserved for Blacks. Two non-black people could not contract a customary marriage. However, the "White Book" proposed to eliminate the race issue in marriage and let the spouses decide whether to contract a monogamous or polygamous marriage, whatever their skin colour.

22. Mrs. SADIQ ALI said that her information on police brutality during a human rights demonstration in 1992 had come from an article in the Africa Research Bulletin, published in Great Britain; she was prepared to send the article to anyone interested as soon as she returned to India.

23. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) thanked the Zimbabwean delegation for its frank replies to practically all the Committee's questions. He hoped that Zimbabwe would make the declaration provided for in article 14, paragraph 1, of the Convention and would accept the amendments to the

Convention adopted at the fourteenth meeting of States parties. He welcomed the abundant information provided in many fields (racial balance in schools, expanded role of the Ombudsman, etc.). He also hoped that the Zimbabwean Government would publicize as widely as possible the International Convention on the Elimination of All Forms of Racial Discrimination and the comments made by the Committee when considering the report.

24. The CHAIRMAN said that the Committee had thus completed the first part of its consideration of the initial report of Zimbabwe.

25. The Zimbabwean delegation withdrew.

Draft general recommendation concerning article 5 (CERD/48/Misc.6) (English only)

26. Mr. WOLFRUM said that the new version of the draft recommendation on article 5, which he hoped the Committee would adopt, consisted of four paragraphs. Paragraph 1 referred to the way in which the Committee generally interpreted the implementation of article 5 of the Convention. Paragraphs 2 and 3 concerned the frequently-raised question of the application of certain rights to non-nationals of a State. Paragraph 4, undoubtedly the most important paragraph, referred to cases where the practices of private institutions might undermine the exercise of the rights or freedoms referred to in article 5, the idea being that the State party must ensure, and the Committee must confirm, that no violation of the Convention was committed in such cases.

27. Mr. VALENCIA RODRIGUEZ suggested that the first sentence in paragraph 3 of the draft recommendation should be deleted, since it expressed an idea that was already contained in the first sentence of paragraph 2. New paragraph 3 would begin with the existing second sentence, amended to read: "Most of the rights and freedoms mentioned in article 5 are related to all living in a given State."

28. Mr. ABOUL-NASR asked what exactly was the purpose of the proposed draft recommendation.

29. Mr. WOLFRUM said that he was quite prepared to endorse Mr. Valencia Rodriguez' suggestion which made the text much clearer. Replying to Mr. Aboul-Nasr, he said that the purpose of the recommendation was to clarify the Committee's position on an issue that arose frequently during its deliberations, namely, the application of article 5 to nationals and non-nationals of a State. There was already a general recommendation on the treatment of non-nationals, but it did not solve the problem of national regulations that treated nationals and non-nationals differently. The Committee was therefore clearly indicating in paragraph 2 of the draft recommendation that if a State imposed restrictions on rights mentioned in article 5 resulting in discrimination against certain non-nationals, the Committee was entitled to look into the question, notwithstanding the opinion of certain States.

30. Mr. de GOUTTES said that the value of a recommendation lay in making things clearer. In his view, however, the wording of paragraph 4, which concerned what was probably the most important point, was not explicit enough. The Committee should indicate that it expected a State in which the behaviour of private institutions affected the exercise of the rights mentioned in article 5 of the Convention to take preventive action and, if necessary, enforcement action.

31. Mr. SHERIFIS said he did not fully understand for whom the recommendation was intended: the States parties or the Committee? The very first sentence of the text would seem to imply that it was intended for the Committee.

32. Mr. WOLFRUM replied that he had added the first sentence at the request of certain members of the Committee, but he was fully prepared to delete it.

33. Mr. FERRERO COSTA said that the draft recommendation was very useful in clarifying certain questions. However, to give the text more weight, he proposed that the last sentence of paragraph 3 should become a new paragraph 4, specifying that it concerned the rights and freedoms mentioned in article 5.

34. Mr. GARVALOV said he was prepared to endorse the draft recommendation but would like to make two remarks. First, he was not sure that the word "presumes" in the penultimate sentence of the first paragraph was appropriate, since the rights mentioned in article 5 were now well established and universally accepted. Secondly, the first sentence of paragraph 4, read in conjunction with the last sentence of paragraph 1, might appear to indicate that a State could choose to recognize and guarantee certain human rights, which were not necessarily those laid down in the Convention. The Committee must keep strictly to the Convention.

35. Mr. van BOVEN said he wished to make three comments on the proposed text, which he supported. First, like all general recommendations, the one under consideration must remain within the limits of the Convention. Secondly, the draft recommendation raised a very important question, in particular in paragraphs 2 and 3, namely, that of nationals and non-nationals. In view of the growing differences in treatment in many countries, especially the countries of the European Union, between nationals and non-nationals, such a recommendation would give the Committee an extra tool for considering that question. The third comment concerned a drafting change; in the first sentence of paragraph 2, the words indicating that the restriction imposed should be proportionate to the objective sought, should in fact refer to the objective legitimately sought since not all objectives were necessarily legitimate.

36. Mr. ABOUL-NASR said he did not believe that the Committee should interpret the Convention. In his view, the draft recommendation was difficult to understand and formulated in a very confusing way. Why, for example, did paragraph 4 state that rights and freedoms "may be protected by a State party" and not "shall be protected by a State party", since under the terms of article 5 States parties were bound to protect those rights? The Committee should take care in choosing the words it used and be clear. If it was referring to the countries of the European Union, it should say so explicitly.

37. Mr. YUTZIS said that the text was useful for three reasons: first, it stressed the need for States parties to the Convention to fulfil the obligations arising under article 5; secondly, it raised the question of treatment of nationals and non-nationals, which was arising more and more often, and not only in the countries of the European Union; and thirdly, it obliged States parties to take into account the behaviour of private institutions when such behaviour affected the rights covered in article 5 of the Convention.

38. Mr. WOLFRUM, replying to Mr. Garvalov, noted that the Committee had always considered the list of rights mentioned in article 5 to be non-exhaustive. The important point was to prevent discrimination against a particular group. As for the use of the word "presumes", perhaps an English-speaking member of the Committee could find a more appropriate verb.

39. Mr. van Boven's remark that not all objectives were necessarily legitimate was a pertinent one. However, as Mr. Valencia Rodriguez had noted, the word "proportionate" had a subjective connotation that was not compatible with the idea of legitimacy. An effort would be made to find another wording to solve that problem.

40. In reply to Mr. Aboul-Nasr, he said he certainly did not dispute the fact that it was not for the Committee to change the Convention. But the Committee must inform States how it would proceed in considering their reports. As for using the word "may" instead of "shall" in paragraph 4, that was explained by the rest of the sentence, which stated: "either directly ... or indirectly". The question raised in that paragraph was very important: although it was rare for States to practise discrimination overtly, they frequently failed to do enough to prevent discrimination. He proposed that a new version of the draft recommendation should be prepared to take the suggested amendments into account.

The meeting rose at 1 p.m.